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3 UNITED STATES DISTRICT COURT FOR THE
4 WESTERN DISTRICT OF PENNSYLVANIA

5 MICROTECH KNIVES, INC.)

6 *Plaintiff,*)

7 v.)

8)
9 JONATHON BENSON and EXILED
EXPORTS LLC.)

10 *Defendants.*)
11 _____)

CASE NO. 1:15-cv-140-BJR

ORDER GRANTING MOTIONS
TO SET ASIDE ENTRY OF DEFAULT
AND DEFAULT JUDGMENT AND
STRIKING AS MOOT MOTION TO
STAY EXECUTION OF DEFAULT
JUDGMENT

12 **I. INTRODUCTION**

13
14 Defendants Jonathon Benson and Exiled Exports, LLC (“Defendants”) bring the
15 following three motions: (1) Motion to Set Aside the Entry of Default [Dkt. No. 16], (2) Motion
16 to Set Aside Default Judgment [Dkt. No. 18], and (3) Motion to Stay Execution of Default
17 Judgment [Dkt. No. 20]. Plaintiff Microtech Knives, Inc. (“Plaintiff”) opposes the motions. Dkt.
18 No. 22. Having considered the parties’ submissions, the relevant case law, and the entire record
19 herein, the Court will: (1) grant Defendants’ Motion to Set Aside the Entry of Default and
20 Motion to Set Aside Default Judgment, and (2) strike as moot the Motion to Stay Execution of
21 Default Judgment. The reasoning for this Court’s decision is set forth below.
22

23 **II. BACKGROUND**

24 Plaintiff initiated this lawsuit on May 28, 2015, alleging that Defendants are infringing on
25 Plaintiff’s registered trademark “Scarab.” Dkt. No. 1 ¶ 40. Plaintiff seeks, among other relief, an
order permanently enjoining Defendants from using the trademark. *Id.* at ¶ 42. Defendants were

1 served with a copy of the complaint on or about June 3, 2015. Dkt. No. 10. Accordingly,
2 Defendants' deadline to respond to the complaint was June 23, 2015. As of August 11, 2015,
3 Defendants had not responded to the complaint, so Plaintiff moved for an entry of default. Dkt.
4 No. 11. The Clerk of Court entered default on August 17, 2015. Dkt. No. 12. Later that day,
5 Plaintiff filed a motion for default judgment. Dkt. No. 13.

6 Also on August 17, Defendants, through their counsel, contacted Plaintiff's counsel
7 regarding the lawsuit.¹ Dkt. No. 22, Ex. 2. Plaintiff's counsel immediately notified Defendants'
8 counsel that default had already been entered in the case and that Plaintiff had filed a motion for
9 default judgment. Plaintiff's counsel alleges that he had no further contact with Defendants'
10 counsel until the filing of the instant motions. Nor did Defendants oppose the motion for default
11 judgment.
12

13 This Court granted default judgment on September 9, 2015. Dkt. No. 14. The next day,
14 Defendants filed a motion to set aside the entry of default. Dkt. No. 16. On September 24, they
15 filed a motion to set aside the default judgment, and on September 28, they moved to stay
16 execution of the default judgment. Dkt. Nos. 18 and 20.
17

18 III. LEGAL STANDARD

19 Rule 55(c) provides that "for good cause shown the court may set aside an entry of
20 default and, if a judgment has been entered, may likewise set it aside in accordance with Rule
21 60(b)." Fed.R.Civ.P. 55(c). Rule 60(b) states, in pertinent part: "on motion and upon such terms
22 as are just, the court may relieve a party or a party's legal representative from a final judgment,
23 order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable
24 neglect....or for 'any other reason that justifies relief.'" Fed.R.Civ.P. 60(b)(1), (6). The Court has
25

¹ The letter was mailed on August 10, 2014, but Plaintiff's counsel did not receive the letter until August 17th. Dkt. No. 22 at 1.

1 broad discretion in deciding whether to set aside a default judgment. *Momah, M.D. v. Albert*
2 *Einstein Med. Ctr.*, 161 F.R.D. 304, 307 (E.D. Pa. 1995). In general, defaults are not favored
3 because the interests of justice are best served by reaching a decision on the merits. *Id.* The Third
4 Circuit has explicitly stated it “does not favor default judgments and in a close case, doubts
5 should be resolved in favor of setting aside the default and reaching the merits.” *Zawadski de*
6 *Bueno v. Bueno Castro*, 822 F.2d 416, 420 (3d Cir. 1987). Thus, motions to set aside default
7 judgments are construed in favor of the movant. *Brokerage Concepts, Inc., v. Nelson Med.*
8 *Group*, No. 99-5214, 2000 WL 283849, *1 (E.D. Pa. Mar. 15, 2000).

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10 The Third Circuit has articulated a four-part test that courts must consider in deciding
11 whether to set aside a default judgment. This Court must consider: (1) whether the plaintiff will
12 be prejudiced if the default judgment is set aside; (2) whether the defendant has a meritorious
13 defense; (3) whether the default was the product of defendant’s culpable conduct; and (4)
14 whether alternative sanctions would be effective. *Emcasco Ins. Co. v. Sambrick*, 834 F.2d 71, 73
15 (3d Cir. 1987).

16 17 **IV. DISCUSSION**

18 Defendants allege that they failed to respond to the complaint in a timely manner because
19 “on July 18, 2015, Mr. Benson was informed that his 27 year-old nephew had unexpectedly
20 died.” Dkt. No. 16 at 2. They further allege that from “that day until August 8, 2015 [Mr.
21 Benson] was committed to helping his brother, as the deceased had died in New Jersey, but Mr.
22 Benson and his brother live in Colorado.” *Id.* Plaintiffs counter that while the death is
23 unfortunate, it does not constitute good cause for Defendants’ failure to timely respond to the
24 complaint or to timely oppose the motion for entry of default judgment.
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1 **A. Prejudice to Plaintiff**

2 A plaintiff is prejudiced by the setting aside of a default judgment when “plaintiff’s claim
3 would be materially impaired because of the loss of evidence, an increased potential for fraud or
4 collusion, substantial reliance on the entry of default, or other substantial factors. *Dizzley v.*
5 *Friends Rehab. Program*, 202 F.R.D. 146, 147-48 (E.D. Pa. 2001). Here, Plaintiff does not
6 allege that it will suffer prejudice if the default judgment is set aside. What is more, the fact that
7 Plaintiff “will have to go forward with the merits of its case rather than simply obtaining a
8 default judgment does not constitute prejudice.” *Blue Ribbon Commodity Traders, Inc. v. Quality*
9 *Foods Distributors*, 2007 WL 4323001, *2 (E.D. Pa. December 11, 2007). Accordingly, the
10 Court finds that this prong weighs in favor of setting aside the default judgment.
11

12 **B. Meritorious Defense**

13 Next, this Court must consider whether Defendants have presented a meritorious defense
14 to Plaintiff’s claims. Defendants assert that a question of fact exists as to whether Plaintiff owns
15 the trademark in question, and further assert that even if Plaintiff is the owner, Defendants have
16 not infringed the trademark. Such allegations, if true, would operate to shield Defendants from
17 liability in this lawsuit. Therefore, the Court finds that these allegations are enough to establish a
18 meritorious defense for the purposes of setting aside a default judgment. Defendants are not
19 required to prove their case at this stage. They “must only allege facts, that if later proven, would
20 constitute a defense.” *Blue Ribbon*, 2007 WL 4323001 at *3.
21

22 **C. Culpable Conduct**

23 Rule 60(b) allows a court to set aside a default judgment for “mistake, inadvertence,
24 surprise [,] excusable neglect...[or for] any other reason that justifies relief.” Fed.R.Civ.P.
25 60(b)(1), (6). In this Circuit, “[e]ven where neglect is inexcusable, and where the Court cannot

1 condone a defendant's failure to respond to a lawsuit for an extended period of time, culpable
2 conduct warranting the refusal to set aside default must rise to the level of 'flagrant bad faith,'
3 and 'callous disregard of responsibility.'" *Blue Ribbon*, 2007 WL 4323001, *3 (quoting *Griffen*
4 *v. Alpha Phi Alpha, Inc.*, 2006 WL 3302438, at *4 (E.D. Pa. Nov.9, 2006)).

5 Here, Defendants argue that their failure to respond to the complaint in a timely manner
6 due to the death of Mr. Benson's nephew constitutes excusable neglect. The problem with
7 Defendants' argument is that the nephew's death occurred on July 18, 2015, twenty-five days
8 *after* the answer or other responsive pleading to the complaint was due. *See* Dkt. No. 18, Ex. 1.
9 In addition, Defendants claim that Mr. Benson returned to his usual business practice by August
10 10, 2015, yet, as of August 17, 2015, Defendants still had not responded to the complaint and the
11 Clerk of the Court entered default. *Id.* Defendants still did not respond to the lawsuit even after
12 being notified that the Clerk had entered default. It was only after default judgment was entered
13 nearly a month later that Defendants finally took action and filed the motion to set aside the
14 Clerk's entry of default. Clearly, such dilatory conduct on the part of Defendants cannot
15 constitute excusable neglect.
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18 On the other hand, Defendants direct the Court's attention to correspondence between
19 Mr. Benson and Plaintiff's counsel that indicated Defendants had been attempting to clarify and
20 even resolve the allegations contained in the complaint from as early as June 12, 2015. *See* Dkt.
21 No. 18, Ex. 3. Therefore, this Court concludes that while Defendants showed a lack of diligence
22 in complying with court imposed deadlines, their behavior does not rise to the level of culpable
23 conduct that warrants denying their motion to set aside the default judgment.
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For the foregoing reasons, Defendants' Motion to Set Aside Default [Dkt. No. 16] and Motion to Set Aside Default Judgment [Dkt. No. 18] are HEREBY GRANTED. Defendants' Motion to Stay Execution of Default Judgment is DENIED as moot. Defendants shall file an answer or other responsive pleading to the complaint on or before November 9, 2015. In addition, if Plaintiff so chooses, the Court will entertain a request for reasonable attorney's fees and costs that Plaintiff incurred in bringing the Motion for an Entry of Default [Dkt. No. 11], Motion for Default Judgment [Dkt. No. 13], and in defending against Defendants' motions. Such a request, if any, shall be filed on or before November 18, 2015. Defendants' response shall be filed on or before November 25, 2015 and the reply shall be filed on or before December 4, 2015.

Barbara Jacobs Rothstein
U.S. District Court Judge

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